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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/847,091	05/01/2001	Eric Arthur Swanson	SYCS-042 (P96)	5732
959	7590	08/05/2005	EXAMINER	
LAHIVE & COCKFIELD, LLP. 28 STATE STREET BOSTON, MA 02109			KIM, DAVID S	
			ART UNIT	PAPER NUMBER
			2633	

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action Before the Filing of an Appeal Brief	Application No. 09/847,091	Applicant(s) SWANSON, ERIC ARTHUR	
	Examiner David S. Kim	Art Unit 2633	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed on 25 July 2005 have been fully considered but they are not persuasive. Applicant's arguments are based on a particular arrangement of the teachings of the prior art of record. However, the standing rejections of the claims are not based on this same particular arrangement of teachings. Rather, they are based on a different arrangement of teachings of the prior art of record. That is, Applicant's arguments characterize the teachings of the prior art of record in a way that does not accurately correspond to the way that the standing rejections actually apply the teachings of the prior art of record. Thus, since Applicant's arguments are based on an inaccurate characterization of the standing rejections, Applicant's arguments do not actually address the standing rejections. Accordingly, Applicant's arguments are not persuasive.

Note some examples of mischaracterization:

- Applicant's statements (25 July 2005, p. 2, last paragraph):

"shadow spans [are] indicated with a single quote"

"W path carrying C band traffic"

"W path carrying L band traffic (only if C band overflow)(See Spec., p. 7, l. 30-31)"

"W' path carrying C band traffic"

"W' path carrying L band traffic (only if C band overflow)(See Spec., p. 7, l. 30-31)"

- Examiner's response:

This characterization shows a normal span and its shadow span both carrying the same traffic at the same time. However, such a characterization is in contrast with the 1:1 protection scheme of Ramaswami, applied in the standing rejections. In 1:1 protection, traffic is transmitted over only one span at a time (Ramaswami, p. 432, 1st full paragraph). Accordingly, Applicant's characterization is not persuasive.

- Applicant's statements (25 July 2005, p. 2, last paragraph):

"W path carrying C band traffic"

"W path carrying L band traffic (only if C band overflow)(See Spec., p. 7, l. 30-31)"

"P path carrying C band traffic"

"P path carrying L band traffic (only if C band overflow)(See Spec., p. 7, l. 30-31)"

"W' path carrying C band traffic"

"W' path carrying L band traffic (only if C band overflow)(See Spec., p. 7, l. 30-31)"

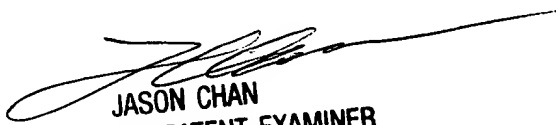
"P' path carrying C band traffic"

"P' path carrying L band traffic (only if C band overflow)(See Spec., p. 7, l. 30-31)"

- Examiner's response:

This characterization shows every path carrying the same bands of wavelengths. However, such a characterization is in contrast with Fig. 1C of Applicant's own disclosure, applied in the standing rejections. In Fig. 1C, "switch 54 directs the optical signals to either of a first amplifier 58 and a second amplifier 60 for amplification, depending on the wavelength of the signals" (Applicant's specification, p. 2, l. 30-32). Also, "optical signals then enter another switch 68, where the signals split and propagate to one of a third amplifier 72 and a fourth amplifier 74, depending on the wavelength of the signals" (Applicant's specification, p. 3, l. 2-4). Furthermore, "[t]here is one set of amplifiers, the first amplifier 58 and the third amplifier 72, that handle one bundle of wavelengths, and a second set of amplifiers, the second amplifier 60 and the fourth amplifier 74, that handle a different bundle of wavelengths" (Applicant's specification, p. 3, l. 26-28). Applicant's own disclosure teaches that the paths in Fig. 1C carry different bands of wavelengths. Accordingly, Applicant's characterization is not persuasive.

If Applicant desires further clarification of the standing rejections, Examiner encourages Applicant to contact Examiner at 571-272-3033.


JASON CHAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600